

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN KEN TOOLE**, on March 22, 2005 at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Ken Toole, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Essmann (R)
Sen. Dan Harrington (D)
Sen. Dave Lewis (R)
Sen. Greg Lind (D)
Sen. Dan McGee (R)
Sen. Gary L. Perry (R)
Sen. Glenn Roush (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: Casey Barrs, Legislative Branch
Claudia Johnson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SJ 31, 3/17/2005; HB 389, 3/11/2005
Executive Action: None.

HEARING ON SJ 31**Opening Statement by Sponsor:**

SEN. AUBYN CURTISS (R), SD 1, opened the hearing on **SJ 31**, Bonneville power resolution.

She said this bill is requesting a delegation stand up for continuing the cost-base rate provided by Bonneville Power. **SEN. CURTISS** distributed a handout, which she read a part on the BPA serving the public interest. She said, because the BPA markets energy and transmission at cost, rather than at market prices, it has traditionally provided some of the lowest cost electricity in the nation. This low-cost power has been a cornerstone of the Northwest economy, stimulating growth and new jobs. The BPA also funds measures to protect and enhance fish and wildlife populations affected by hydro power development. The BPA also provides a number of public benefits including incentives for energy conservation programs and research and development of renewable resources and promising technologies, such as fuel cells. The BPA also works with other federal agencies to coordinate operations of the Federal Columbia River Power System to ensure maximum efficiency in the system and minimum environmental impacts.

EXHIBIT (ens63a01)**Proponents' Testimony:**

Gary Weins, representing the Montana Electrical Cooperatives Associations. He distributed written testimony, which he read. He stated that the association includes all 26 electric distribution cooperatives in Montana. He said, on behalf of these electric consumers, the association is in strong support of SJ 31. He commended the entire Montana delegation that support these cost-base rates. He stated that this legislation also has the potential in the affect of electrical consumer across the country, because federal cost-base power has always been a bench mark for market prices. He urged the Committee to support SJ 31.

EXHIBIT (ens63a02)

Greg Jergeson, Commissioner and Chairman for the Public Service Commission (PSC), said that the Montana PSC had a meeting with members from other states who support this resolution. He urged the Committee for a do pass.

Dan Flynn, representing the IBEW Local 44, stated they support this resolution. He urged a do pass.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. CURTISS closed. She said that the state of Washington has passed a similar resolution. This has been a very important issue for the last 10 years, and it isn't going to die. She informed the Committee that a Senator from the state of Oregon who thought this was serious enough on the attack on cost-base rates investigated the issue so people could purchase the BPA, and maintain the aluminum plants and other industries. She thanked the Committee for their support.

HEARING ON HB 389

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Opening Statement by Sponsor:

REP. ALAN OLSON (R), HD 45, opened the hearing on **HB 389**, Cost recovery for electricity generated by default supplier.

He informed the Committee that this legislation will allow the NorthWestern Energy Company to own their generation, which they are currently prohibited from. This is an attempt to build NW back to a integrated, regulated utility like Montana Power was. He walked the Committee explaining each section of the bill and what it will do for NW.

Proponents' Testimony:

John Fitzpatrick, representing NorthWestern Energy (NW), informed the Committee that NW just came out of bankruptcy. He stated there has been a lot of discussion over the last several years regarding de-regulation. He said this is the first concrete step to begin that process. He said that contrary to notions, a coal supplier is not prohibited from coal generation, but what they are prohibited from doing is, rate-basing that generation as receiving a greater return on its transmission. This bill provides an opportunity for NW to supply generation in a number of ways, and include in its rate-base, the cost of service in the future. He stated that this is the way Montana Power operated before 1998. He talked about NW just coming out of their bankruptcy, and they do not have any investment rate or credit

rating. He said it allows NW to participate in the acquisition of generation. This bill will assist NW in building portfolios in the future. He stated that the first thing that NW will do upon passage of this bill is to bring in their rate-base in its share of Colstrip IV in the year 2010. He said the bill provides a basic framework for a beneficial step is the features of de-regulation. He said there was numerous amendments that were placed on the bill in the House Committee. He disagrees with the amendment in Section 5, Subsection 2 (b), pages 12 and 14, where NW considers the language there essential for them to be able to go forward, and they feel comfortable that they can apply generation assets without second guessing from the PSC. He talked about the disappointment that NW had with the PSC, and the Montana Consumer Council (MCC), and the persistent intervention between the old ways of the PSC, and the new process that is now in place.

Dan Flynn, IBEW Local 44, stated their support for HB 389. He urged a do concur motion.

Opponents' Testimony:

Greg Jergeson, Chairman and Commissioner of the PSC, said they are not satisfied with the language in the bill. He stated that changes must be made in order to remove the careful opposition that the PSC has expressed. The PSC position was for one extension that Commissioner Molnar has abstained from due to the notion in the PSC decision is, if the amendments were removed they wouldn't oppose the bill. He talked about the meeting between the PSC, NW, and the MCC, who came to a agreement on Section 6 of the bill that is complies with the current events approval process in approving contracts by outside suppliers to the default supplier. He said with those amendments that had been discussed, the PSC was looking forward to the approval of this bill. Then after the PSC approved those amendments, other amendments were added on, and those other amendments constitute the basis of the PSC's problem with the bill as it is currently written. He distributed the amendments, and explained what they do. He didn't know where the amendment came from that states that the PSC and NW Energy had arrived at in Section 6, and the language that was added about the PSC protecting the information on the notion of someone doing this in the public interest. The PSC went through the Great Falls Tribune case on the kinds of information and what circumstances that protect information. He talked about **SEN. ESSMANN'S** bill on the PSC's ability to protect information that was in the old statute on "trade secrets", and called the other information as "required by law" because interest information would create a conflict and be in violation of the Great Falls Tribune decision, and the subsequent statutory

changes. He said that the language in Section 6 is gratuitous and unnecessary, and has nothing to do with this bill. Language on page 9, line 5, relates to procedures that are currently in place. He discussed the language on page 8, subsection (b) and (c) that was added and are problematic for the PSC. It talks about a default supplier "may" invest and acquire. He said in the rest of the section, it states that the default supplier "shall".

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Commissioner Jergeson said that the case mentioned by the sponsor and the proponent from NW Energy, the company that has called its opportunity for addressing the process which is working its way through the process. He stated that the courts will determine that circumstance has nothing to do with this.

EXHIBIT (ens63a03)

David Hoffman, Manager of Executive Affairs for PPL Montana, LLC, distributed written testimony, which he read. He informed the Committee that PPL is one of the owners of Colstrip. He stated that this bill will impact the citizens of Montana, and will be permanent and long lasting. This legislation, if adopted, would face the risks and costs, in the building of generation on the checkbooks of Montanans. It will place the default supplier in the position of means in the development of expertise, in building, owning, and operating and generating in Montana. He asked the Committee to consider the number of positive steps in order to obtain NW Energy's future, such as; support and encourage the investment in transmission infrastructure in Montana, support the formation of a regional transmission organization in the Pacific Northwest, and expand retail customer choice, etc. He said that adopting HB 389 will not be in the best interest of Montana consumers. He urged a do not pass.

EXHIBIT (ens63a04)

John Shontz, representing Lee Enterprise, said they support amendments 7 and 8, in the handout from **Commissioner Jergeson**. He said that public interest standard does not include Montana law in terms of withholding information from the public. He stated that **SEN. ESSMANN'S** bill, SB 356, addresses this issue. The way the law stands today is, that information can be withheld if a individual's privacy is involved, or on the public side of the world, a trademark or a trade secret, is involved. He talked about the Supreme Court decision in 1988, the Great Falls Tribune v. PSC, was specific in stating "when seeking out a benefit for a

private supplier is not grounds to pervade the Constitutional standards." He urged the Committee to adopt amendments 7 and 8.

Informational Testimony:

Brad Molnar Commissioner, PSC, stated he isn't against the bill, but he supports the integrated rate-base. He said there is only one way through the current portfolio, and that is through NW Energy.

Questions from Committee Members and Responses:

CHAIRMAN TOOLE asked **REP. OLSON** to explain his reason and thoughts on the issue of pre-approval. He added, if there is a default supplier that is allowed to purchase and then rate-base generation assets, then it could be assumed they would receive their rate of return on their capital investment. He said this is not a market base system where the risks is assumed by someone in the market place. He said when one section is rate-based, a person is pretty much guaranteed a return, and wanted to know if he was off-base with this theory.

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REP. OLSON responded to **CHAIRMAN TOOLE** that he wasn't totally off-base. He stated that is one of the reasons he had pre-approval in the bill. He said the default supplier (NW) will have to come up with a plan with the PSC. They have to establish rates, etc. rather than have NW go out and expend their capital, then take a risk on the PSC not approving the plan. He said that the PSC is not required to pre-approve. He said that NW is also not required to go to the PSC for preapproval. He stated if this happens, then the NW should be allowed to re-coup those costs that the PSC had approved.

CHAIRMAN TOOLE followed up, stating that it is known that large projects have difficulty generating capital, and given that, it takes five years to bring a large central station plant on, so there is risk, and he asked why it would be appropriate for a customer to assume that risk over the developer. **REP. OLSON** replied, that the customer takes the risk if a utility signs a 20-year contract. He said, it is a risk in determining what the power prices will be 20 years from now. **CHAIRMAN TOOLE** commented that it is his understanding that the default supplier doesn't turn on their rate of return. He said, "I know the public assumes the risk, that prices will go up, and the contract will go up, but the difference is, there is no rate of return associated with the power purchase contract." **REP. OLSON** said the default supplier doesn't receive a rate of return on

contract, but the generator supplying power for that contract receives a return.

Closing by Sponsor:

REP. OLSON closed. He informed the Committee that he can accept amendments 4,5 6,7 & 8 by the PSC, but he has problems with amendments 2 & 3. He addressed the concerns of the opponents

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REP. OLSON read a poem he received from the Legislature of 2001. "Dear God, we pray in this dark hour, please send us cheap electric power. We swear to attend daily mass if we have low-cost natural gas. Lord, please accept our deepest contrition for lusting after competition. From the Marxist terrorist, set us free, and bring back our beloved Mohammed".

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. KEN TOOLE, Chairman

CLAUDIA JOHNSON, Secretary

KT/cj

Additional Exhibits:

EXHIBIT ([ens63aad0.TIF](#))